

Message Text

CONFIDENTIAL

PAGE 01 USBERL 02319 01 OF 02 281751Z
ACTION EUR-12

INFO OCT-01 ISO-00 CIAE-00 DODE-00 NSAE-00 NSCE-00
SSO-00 ICAE-00 INRE-00 PM-05 H-01 INR-10 L-03
PA-01 SP-02 SS-15 CAB-02 COME-00 DOTE-00 EB-08
FAA-00 MCT-02 IO-14 ACDA-12 /088 W
-----007304 281842Z /43

O R 281633Z SEP 78 ZFF-4
FM USMISSION USBERLIN
TO SECSTATE WASHDC NIACT IMMEDIATE 7773
AMEMBASSY BONN IMMEDIATE
INFO AMEMBASSY BERLIN
AMEMBASSY LONDON
AMEMBASSY MOSCOW
AMEMBASSY PARIS
AMEMBASSY WARSAW
AMCONSUL MONTREAL
USMISSION USNATO

C O N F I D E N T I A L SECTION 1 OF 2 USBERLIN 2319

MONTREAL FOR US ICAO REP

E.O. 11652: GDS
TAGS: PINS BQG WB PL
SUBJECT: HIJACK OF POLISH LOT AIRCRAFT TO BERLIN: PRESS GUIDANCE

REF: A) BONN 17763 B) USBER 2284

SUMMARY. GERMAN PRESS HAS LEARNED OF U.S. DECISION TO
TRY HIJACKER AND HAS SOUGHT CONFIRMATION FROM BERLIN JUSTICE
AUTHORITIES. BERLIN AUTHORITIES DID NOT RPT NOT CONFIRM
INFORMATION. USBER REQUIRED IMMEDIATE PRESS GUIDANCE. IN
OUR VIEW, THAT PRESS GUIDANCE SHOULD NOT BE USED UNTIL WE ARE
IN A POSITION TO ARREST AND ARRAIGN ACCUSED. ACTION REQUESTED:
IMMEDIATE GUIDANCE FROM SECSTATE. END SUMMARY.

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PAGE 02 USBERL 02319 01 OF 02 281751Z

1. USBER HAS JUST BEEN ADVISED BY BERLIN JUSTICE OFFICIALS
THAT SPIEGEL HAS CONTACTED THEM TO CONFIRM REPORTS WHICE
SPIEGEL HAS RECEIVED THAT U.S. HAS DECIDED TO PROSECURT
HIJACKER IN BERLIN. BERLIN JUSTICE
AUTHORITIES ADVISED SPIEGEL THAT THEY HAD NO INFORMATION
ON THE SUBJECT, AND THAT MAGAZINE SHOULD TURN TO BONN
WHERE CONSULTATIONS HAVE BEEN TAKING PLACE. USBER OFFICER

THANKED JUSTICE OFFICIAL FOR REPORT AND INDICATED THAT BERLIN JUSTICE AUTHORITIES SHOULD MAINTAIN THAT POSITION UNTIL THEY HAD HEARD OTHERWISE FROM US.

2. USBER BELIEVES THAT WE SHOULD ISSUE A PRESS STATEMENT ON THIS MATTER. WE SEE THE FOLLOWING TWO ALTERNATIVES:

A. THAT DEPARTMENT APPROVE A PRESS STATEMENT TO BE RELEASED IMMEDIATELY BY USBER OR
B. THAT DEPARTMENT APPROVE A PRESS STATEMENT WHICH USBER WILL NOT RPT NOT RELEASE UNTIL A JUDGE HAS BEEN APPOINTED TO THE U.S. COURT FOR BERLIN AND THE COURT'S RULES HAVE BEEN ESTABLISHED BY HIM. AND U.S. AUTHORTIES IN BERLIN ARE IN A POSITION TO ARREST THE ACCUSED AND COMMIT FOR TRIAL.

3. OPTION A HAS THE ADVANTAGE OF QUELLING SPECULATION IN A TIMELY MANNER. HWOEVER, WERE WE TO MAKE THAT STATEMENT, IT IS POSSIBLE THAT THE ACCUSED WOULD NO LONGER BE WILLING TO REMAIN VOLUNTARILY IN OUR CUSTODY. THIS WOULD POSE SIGNIFICANT PROBLEMS WERE WE NOT IN A POSITION TO IMMEDIATELY ISSUE AN ORDER FOR ARREST AND TO COMMIT FOR TRIAL.

4. ACCORDINGLY, USBER RECOMMENDS THAT WE PROCEED ALONG THE LINES OF OPTION B. THIS REQUIRES URGENT APPOINTMENT
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 USBERL 02319 01 OF 02 281751Z

OF JUDGE FOR U.S. COURT FOR BERLIN AND THE IMMEDIATE CONCLUSION OF PREPARATION OF THE RULES FOR THE COURT WHICH THE U.S. JUDGE FOR BERLIN WOULD BE ABLE TO ESTABLISH.

5. IN REFTEL A, EMBASSY BONN HAS SUGGESTED TWO REVISIONS IN USBER PROPOSED PRESS GUIDANCE REPORTED REFTEL B. USBER WOULD LIKE TO EXPLAIN RATIONALE BEHIND INCLUSION OF TWO POINTS IN QUESTION.

6. IN 1969 FRENCH CASE, FRENCH AUTHORITIES ISSUED A LETTER TO THE BERLIN AUTHORITIES STATING THAT PURSUANT TO ARTICLE 7 OF AK LAW NO. 7, MATTER INVOLVING HIJACK OF AIRCARFT TO TEGEL WAS BEING WITHDRAWN FROM JURISDICTION OF BERLIN COURTS. THIS WAS NECESSARY BECAUSE IN THE ABSENCE OF SUCH A WITHDRAWAL, THE GERMAN COURTS WOULD HAVE WHAT AMOUNTS TO ORIGINAL JURISDICTION IN THE MATTER. IN THE 1970 BRITISH CASE IN WHICH A BERLINER WAS TRIED FOR HAVING SHOT A SOVIET SOLDIER, THE BRITISH DID NOT REPEAT NOT WITHDRAW JURISDICTION FROM THE BERLIN COURTS. THE DIFFERENCE BETWEEN THE BRITISH CASE AND THE FRENCH CASE (AND OURS) IS THAT IN THE BRITISH CASE THE CRIMINAL ACT INVOLVED A MEMBER OF THE (SOVIET) OCCUPATION FORCES IN BERLIN. THUS, ACCORDING TO

AK LAW NO.7, BERLIN COURTS HAD NO RPT NO JURISDICTION IN
THE BRITISH CASE ABSENT AN AUTHORIZATION FROM THE BRITISH
(IN WHOSE SECTOR THE ACT HAD OCCURRED) TO EXERCISE JURISDICTION.
SUCH CONSENT, OF COURSE, WAS NOT GIVEN IN
THE BRITISH CASE.

CONFIDENTIAL

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CONFIDENTIAL

PAGE 01 USBERL 02319 02 OF 02 281835Z
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C O N F I D E N T I A L SECTION 2 OF 2 USBERLIN 2319

7. IN OUR VIEW, WE SHOULD EXPECT AN INQUIRY FROM THE
BERLIN PRESS WHETHER THE U.S. HAS WITHDRAWN JURISDICTION
FROM THE BERLIN COURTS. WE CONSIDER THAT THIS WOULD BE
AN ENTIRELY VALID QUESTION TO WHICH WE SHOULD BE IN A
POSITION TO RESPOND IMMEDIATELY. PRACTICE HAS SHOWN US
THAT WE HAVE A SOMEWHAT BETTER CHANCE OF HAVING OUR PRESS
STATEMENTS REPORTED ACCURATELY IN BERLIN IF THEY ARE IN
THE FORM OF PRESS RELEASES RATHER THAN IN THE FORM OF ORAL
RESPONSES TO PRESS INQUIRIES. WE ARE SOMEWHAT CONFUSED BY
THE EMBASSY BONN STATEMENT THAT "THIS INFORMATION, IF GIVEN,
IS LIKELY TO RAISE MORE QUESTIONS THAN IT ANSWERS." FOR
REASONS STATED ABOVE, THIS INFORMATION DESCRIBES A LEGAL
NECESSITY WHICH BRITISH AND FRENCH LEGAL ADVISERS EXPECT TO
TAKE PLACE.

8. SIMILARLY, WE BELIEVE THAT IT IS IN OUR INTEREST TO

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PAGE 02 USBERL 02319 02 OF 02 281835Z

MAKE CLEAR FROM THE BEGINNING THAT THE U.S. MISSION BERLIN WILL BE EXCEEDINGLY TIGHT-LIPPED ON MATTERS RELATED TO THE INVESTIGATION AND PROSECUTION OF THE ACCUSED. IT IS AN EXTREMELY UNUSUAL SITUATION FOR A U.S. FOREIGN REPRESENTATION TO BE SO INTIMATELY INVOLVED WITH A CRIMINAL PROSECUTION. IN ORDER TO SEEK TO INSURE THAT THE LEGAL PROCESS IS NOT POLITICIZED OR UNDULY PUBLICIZED, USBER BELIEVES THAT IT IS IN USG INTEREST FOR US TO MAKE CLEAR AS SOON AS POSSIBLE THAT WE WILL RESTRICT OUR COMMENTS ON THIS MATTER. AS STATED ABOVE, WE BELIEVE THAT OUR COMMENTS ON THIS ISSUE WILL BE REFLECTED MORE ACCURATELY IN THE PRESS IF ISSUED IN THE FORM OF A PRESS RELEASE RATHER THAN IN THE FORM OF AN ORAL RESPONSE TO PRESS INQUIRIES.

9. AMEMBASSY BONN MAY WISH TO REPEAT REF A TO WARSAW, MONTREAL, AND U.S. MISSION USNATO.

10. ACTION REQUESTED: IMMEDIATE GUIDANCE FROM SECSTATE. ANDERSON

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Message Attributes

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Current Classification: UNCLASSIFIED
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Control Number: n/a
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Draft Date: 28 sep 1978
DecapTION Date: 01 jan 1960
DecapTION Note:
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TAGS: PINS, WB, PL, BQG
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